

ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In re Applications of

TRINITY BROADCASTING OF FLORIDA,
INC.

For Renewal of License of
Station WHFT(TV) on Channel 45,
Miami, Florida

and

GLENDALE BROADCASTING COMPANY

For a Construction Permit for a
New Commercial TV Station to
operate on Channel 45, Miami,
Florida

To: The Review Board

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REPLY TO EXCEPTIONS

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SUMMARY

The record mandates affirmance of the conclusion that Trinity Broadcasting of Florida, Inc. is unfit to be an FCC licensee. National Minority Television, Inc. (NMTV) was under the absolute de facto control of Trinity Broadcasting Network (TBN) and its President Paul Crouch. NMTV has always been totally reliant on TBN for funds, and TBN has also controlled NMTV's finances through a business services agreement. TBN employees and representatives have managed NMTV affairs on TBN time and have treated the two companies as indistinguishable. TBN has provided or otherwise controlled all of NMTV's programming. The NMTV directors who are not affiliated with TBN lacked the elementary knowledge needed to govern the company and have had no meaningful input into the company's affairs. TBN's control over NMTV's affairs is irrefutable and absolute. None of the cases Trinity or NMTV cite show otherwise.

Trinity and NMTV acted with a conscious intent to deceive the FCC. TBN and NMTV repeatedly lied to the FCC and failed to honestly report the nature of the relationship between them. The excuse that Crouch relied on counsel must be rejected because the nature of the advice made it unreliable, the circumstances under which the advice was given make it unlikely that there was reliance on counsel, testimony from Paul Crouch indicates that he understood that full disclosure needed to be made to the FCC, and the advice was subject to qualifications that were not complied with. The claim that NMTV was a company intended to serve minorities and to bring minorities into broadcasting is a sham. Disclosures that were made to the FCC did not paint an honest picture of the relationship and do not show an intent to be forthcoming.

The Presiding Judge properly resolved in Glendale's favor an issue to determine whether Raystay Co. misrepresented facts or lacked candor in applications to extend LPTV construction permits. Raystay had not abandoned an intention to build the permits when it filed the applications, and Raystay did not file extension applications so it could build the permits. Most of the statements in the applications are true and correct, and the one statement the Presiding Judge questioned was made in good faith. The allegations of lack of candor must fail because most of the information in question was not required to be provided and because the extension applications accurately stated what Raystay had done and had not done. There is no evidence that George Gardner, the common link between Raystay and Glendale, knew any of the statements were false or that any required information was missing.

REPLY TO EXCEPTIONS

Glendale Broadcasting Company (Glendale) replies to the exceptions filed by Trinity Broadcasting of Florida, Inc. (TBF) and Trinity Broadcasting Network (TBN) (collectively, Trinity). National Minority TV, Inc. (NMTV), and the Mass Media Bureau (Bureau) on January 23, 1996. The failure to respond to a specific item is not a concession as to its accuracy or merit.¹

I. TRINITY'S QUALIFICATIONS

This case presents an egregious and shocking case of systemic and pervasive misconduct by a FCC licensee. The Initial Decision (I.D.) conclusively shows that NMTV has always been under the absolute control of TBN and Paul Crouch, the President of TBN. TBN and NMTV have systematically and consciously deceived the FCC about the nature of their relationship and abused the FCC's processes by claiming undeserved minority preferences in an attempt to expand TBN's broadcasting empire beyond what the FCC's rules allowed. In their exceptions, Trinity and NMTV argue that NMTV was not under the de facto control of NMTV and that even if it was, disqualification is unwarranted because there was no intent to deceive the FCC. Neither argument has any merit whatsoever.

It is important that TBN has previously been adjudicated to have engaged in serious misconduct. In International Panorama TV, Inc. (KTBN-TV), FCC 83D-4 (ALJ, released January 25, 1983), an application filed for KTBN-TV was found

¹ Two preliminary matters are noted. First, both the Trinity and NMTV exceptions are replete with references to their proposed findings and conclusions that must be disregarded. Filing of Exceptions and Briefs and Reply Briefs Before the Review Board, 69 FCC 2d 1193 (1978). Second, NMTV suggests that the Presiding Judge was biased or hostile and that he prejudged the issues. NMTV at 5 n.5. In a Praise the Lord newsletter (copy attached), Paul Crouch has engaged in a similar attack on the Presiding Judge's integrity and fairness. These attacks are wholly unsupported and improper. As NMTV's law firm has been told previously, if a party believes a Presiding Judge is biased, it should file a request for recusal. RKO General, Inc. (WAXY-FM), 4 FCC Rcd 4679, 4693 (Rev. Bd. 1989).

to have contained material misrepresentations concerning ascertainment. The decision was severely critical of Crouch for signing the application without any meaningful review. Conc. at ¶3. The ALJ also determined that Crouch was guilty of:

a total delegation of functions to Flynn and, as a result, an abdication of the responsibility to have assured himself that all of the representations in the application were true and correct.

Conc. at ¶7.² Crouch has continued to abdicate that responsibility, and he has now shown to have engaged in far more serious misconduct than was proven in International Panorama.

A. De Facto Control

Contrary to the arguments of Trinity (at 8) and NMTV (at 15), the FCC's standards for evaluating de facto control are well established. The requirement that a licensee actually control its station and that the FCC know who is in charge of the facilities it licenses is a basic tenet of the Communications Act. See Lorain Journal Co. v. FCC, 351 F.2d 824 (D.C. Cir. 1965), Heitmeyer v. FCC, 95 F.2d 91, 99 (D.C. Cir. 1937), Benjamin L. Dubb, 16 FCC 274, 289 (1951). The FCC considers all available factors in determining where de facto control lies, but the major factors are control of finances, personnel, and programming, and the ability to dominate the board of directors. Trinity Broadcasting of Florida, Inc., 8 FCC Rcd 2475, 2477 (1993) (HDO).

1. Control of Finances. TBN's control over NMTV's finances was absolute. TBN has been NMTV's sole source of financing. As of 1993, NMTV owed TBN over \$5 million, which was purportedly being paid off at \$27,000 a

² Trinity's claim that the case showed Crouch's good faith (Trinity at 19 n.31) ignores the fundamental ruling that Crouch did not live up to his responsibilities and allowed a serious misrepresentation to occur.

month. Joint Ex. 1, Pp. 26-27. From 1980 to 1987, TBN debited Translator TV, Inc.'s³ account for TBN translator and LPTV expenses (NMTV had no such expenses at the time) because NMTV was considered a mere vehicle for TBN's translator activities. I.D., ¶311, Joint Ex. 1 at 11-15. When NMTV purchased its Odessa and Portland stations, TBN simply provided the needed funds without any agreements or documentation. I.D., ¶¶312-313. Trinity excuses this informality by explaining, "Crouch was on the NMTV Board and thus had knowledge of NMTV's affairs..." Trinity at 27. That is the point. Crouch and TBN controlled NMTV, so formality was not needed. I.D., ¶312. NMTV did not have its own bank account until 1987, and when accounts were finally opened (using TBN funds), TBN employees were signatories on the bank accounts. Joint Ex. 1, Pp. 16-17. In contrast, David Espinoza, NMTV's Chief Financial Officer, never signed any NMTV check. Tr. 4177. TBN paid for equipment used in NMTV stations and provided guarantees for equipment credit. Joint Ex. 1, P. 20, MMB Ex. 290, Tr. 1376-1377.

TBN also controlled NMTV's finances as NMTV's "accounting agent" or provider of business services. A 1991 agreement (which memorialized prior practice, Tr. 1430) made TBN responsible for preparing NMTV's payroll, financial statements, tax returns, purchasing, data processing, and servicing NMTV's accounts payable. MMB Ex. 337.⁴ TBN handled the revenues that NMTV

³ For ease of reference, NMTV will be used to refer to the corporation under both its earlier name of Translator T.V., Inc. and its current name.

⁴ Trinity argues that the business agreement is evidence of NMTV's bona fides because NMTV director and long time and TBN's Assistant to the President Jane Duff "sought a replacement" and negotiated a lower fee than TBN wanted to charge. Trinity at 27. The effort to "seek a replacement" was one phone call to one firm. Tr. 1425. Moreover, TBN had already provided the same services to NMTV for free for many years, so the agreement was hardly an improvement of NMTV's position. Indeed, TBN's willingness to provide these services at less than cost (Tr. 1427) shows their relationship was less than arms length.

"received" from donors. Joint Ex. 1, Pp. 21-23. Trinity's argument that Alabama Educational Television Commission, 33 FCC 2d 495, 508 (1972) (Trinity at 26) sanctions such an arrangement so long as it can be terminated is specious - there is no discussion of such an agreement in that case.

Any financial actions at NMTV directors' meetings were ratifications of decisions that others had made. NMTV's directors never developed a budget. David Espinoza, the alleged Chief Financial Officer, did not: see checking account statements (Tr. 4275), see legal bills (Tr. 4228-4229), know how much the Odessa station cost (Tr. 4355), receive tax returns or financial statements (Tr. 4196-4198), notice negative fund balances accruing during the 1980s (Tr. 4334-4335), know whether Duff or Crouch received a salary from NMTV (Tr. 4147-4148), or know the terms of NMTV's debt (Tr. 4161-4162). NMTV director Phillip Aguilar knew nothing about NMTV's finances. TBF Ex. 107, Pp. 58-65, 161-163. As of his deposition, NMTV director E.V. Hill did not know how much NMTV owed TBN and had not seen a memorandum from TBN to the NMTV board concerning the debt. Tr. 1979-1980, 1988-1990.

2. Personnel. Trinity casts the inquiry regarding personnel in terms of who had the authority to hire and fire personnel. Trinity at 23-24. That obscures the fundamental fact that TBN personnel performed most of the major functions for NMTV. Paul Crouch was President of both TBN and NMTV, and played a dominant role in both corporations.⁵ Many other TBN employees were also involved in NMTV's affairs.

⁵ Trinity's "astonishment" that the Presiding Judge would find de facto control because Crouch was an officer and director of both companies (Trinity Exceptions, Pp. 24-25) distorts what the Presiding Judge said. Paragraph 317 of the I.D. lists Crouch's dual role as one of many instances in which "TBN personnel have performed work at all levels for TTI/NMTV without compensation and, in numerous instances, as part of their TBN duties." Trinity's argument is another improper attempt to focus on one isolated element of the complicated mosaic of facts considered by the Presiding Judge.

a. TBN employees. TBN's Director of Engineering, Ben Miller, had overall supervisory responsibilities for NMTV's engineering affairs, rather than the very limited role Trinity (at 24) suggests. I.D., ¶319. Indeed, he held himself out as NMTV's Director of Engineering. MMB Ex. 249. TBN employees and a TBN volunteer located sites and provided technical advice for NMTV's low power stations under Miller's direction. Tr. 1412-1415, 1774, 2170-2171. Planck Technical Services, Inc., a company TBN owned from the late 1980s to fall 1992, constructed and maintained NMTV low power stations. Id., Pp. 19-20, 106, 107, Tr. 2333-2335. TBN employee Tim Geist monitored low power technical maintenance for NMTV on TBN time. MMB Exs. 360-361, Tr. 2141-2144. Miller and his purchasing secretary resolved disputes with NMTV vendors. Glendale Ex. 210, Pp. 26-27, 65-66.

NMTV employees who had managerial functions had close ties to TBN. Jim McClellan, the Portland station manager, had been a TBN employee since 1976 (one year excepted). TBF Ex. 109, Pp. 3-4. He learned of the opening while talking to TBN employees Miller and Terrence Hickey. Id., P. 6. Even after taking the NMTV job, McClellan continued to work for TBN (see Programming, infra). Mark Fountain was a TBN maintenance engineer when he applied for the Portland Chief Engineer position. Duff hired Fountain after consulting with Miller. Fountain was the only applicant considered. Tr. 1908-1911.

b. Norman Juggert. Although TBN director and attorney Norman Juggert was not an NMTV employee, officer, or director, his active participation in NMTV's affairs is further proof of the pervasive involvement of TBN representatives in TBN's affairs. He prepared the initial corporate and tax papers for NMTV (TBN paid for those services). TBF Ex. 108, ¶5. Although he described his attendance at NMTV board meetings as a scrivener and non-participatory, Espinoza Aguilar, and Hill all viewed Juggert as NMTV's

lawyer. Tr. 4319-4320, TBF Ex. 107, Pp. 36-37, Tr. 1926-1932-1933. For NMTV, Juggert: handled a lease problem, prepared the name change and written actions in lieu of meetings, recommended errors and omissions insurance to Duff, prepared the business services agreement, prepared the production agreement for the Joy program, drafted the TBN-NMTV promissory note, and attempted to implement a proposed loan from NMTV to Community Brace, Inc., a company controlled by Hill.⁶ Tr. 3670-3673, 3666-3669, 3664-3665, 3775-3776, Glendale Ex. 218. Even though Juggert repeatedly claimed he was representing TBN (not NMTV) in many of these transactions, others perceived him to be working for NMTV, and nobody ever saw any conflict of interest, even when the two companies had different interests.

c. Jane Duff. Special consideration must be given to Jane Duff's roles as Paul Crouch's assistant at TBN and as an NMTV director. NMTV argues that Duff's NMTV role shows that it was a bona fide minority controlled company. NMTV at 8-10, 23-24. It points to instances where Duff allegedly prevailed over Crouch's opposition, and argues that Duff must be viewed as an independent agent because she has not been shown to be acting as Crouch's agent. As the ALJ found, the overwhelming evidence shows that Duff viewed her NMTV role to be merely an extension of her TBN role.

First, Duff was never paid by NMTV, and she regularly performed NMTV duties during her work day at TBN without loss of salary. I.D., ¶317.

⁶ The Community Brace incident is a clear indication of how TBN felt free to run NMTV's affairs at any time. TBN director Juggert began substantive work on the project even before the NMTV board approved the project. Glendale Ex. 218, MMB Ex. 405. The documents in Glendale Ex. 218 show that the Community Brace transaction was managed by Juggert and was contemplated as a way to "estop" the FCC from questioning NMTV's bona fides. Aguilar, the only NMTV outside director eligible to vote on the matter, was never told why the loan did not go forward, and could not recall discussing the matter with anyone. TBF Ex. 107, Pp. 177-179.

Second, Duff and other personnel frequently sent out NMTV-related letters on TBN stationery. The record has many instances where TBN personnel received letters concerning NMTV business, NMTV business was conducted on TBN stationery, and letters concerning NMTV business were signed in a TBN capacity.⁷ Third, contrary to the claims that Duff's role at the two companies were greatly different (NMTV at 10, Trinity at 25), her description of her TBN duties (I.D., ¶14) shows that she had a similar types of duties at the two companies. The citations at Trinity 25 n.41 do not show otherwise.

Duff always acted in TBN's interest, even when there was an apparent conflict between TBN's interest and NMTV's interest. For example, NMTV only applied for new translator or LPTV stations as opposed to buying existing stations. Only TBN bought existing LPTV stations or permits. Tr. 1713. NMTV never applied for a station in a community that had over-the-air TBN service. Tr. 1744-1745. When Colby May or Norman Juggert performed work relating to both TBN and NMTV (e.g., preparation of agreements), Duff never saw any conflict of interest, even though if TBN and NMTV were truly independent companies, their interests would be adverse. Tr. 1437-1441. When Duff prepared the TBN-NMTV Portland affiliation agreement, Crouch relied on Duff to look out for TBN's interests. Tr. 1435-1436.

The disagreements between Crouch and Duff cited by Trinity (at 30) and NMTV (at 9) do not show Duff's or NMTV's independence. Duff's and Espinoza's initial opposition to the sale of Odessa vanished only five months later (MMB Ex. 256), so Crouch got his way shortly afterwards. The reasons given for their change of mind (disappointing performance and inability to get cable

⁷ See MMB Exs. 14-16, 20, 22-23, 32, 33, 35-37, 77, 119-120, 126, 136, 168, 177, 194, 198, 227-229, 239, 241, 242, 245, 286, 343, 344, 352, 360-363, 376, 391, 403, 406, and 409.

carriage) were not credible. Espinoza admitted that the Odessa station was not given an adequate opportunity to develop. Tr. 4245. The real reason for the sale was the desire to move to a larger market. MMB Ex. 293, TBF Ex. 121, P. 11, Tr. 4249. No concrete steps were even taken to serve minorities in the Odessa area. Tr. 1481, 1483, 4231-4237.

The other purported evidence of minority control was a decision to sell a low power station near Houston, Texas. In fact, this disagreement, and the testimony at ¶18 of TBF Ex. 105 is an elaborate fiction. Even though David Espinoza, the only outside director at the time, purportedly decided to sell, he had no recollection of the issue at his deposition (Tr. 4207), had no knowledge about as to why Paul Crouch wanted to build the station (Tr. 4220-4221), and did not know why the station was not built. Tr. 4373.

3. Programming. NMTV never broadcast programming other than TBN provided or approved programming. NMTV's translators and LPTV stations, as well as the Odessa station, have never carried any programming other than TBN programming. Tr. 1433. The Portland station carried the entire TBN schedule in 1992. As of the close of the record, NMTV broadcast three local programs - Joy in the Morning, Northwest Praise the Lord, and Northwest Focus. Tr. 4404-4405. In fact, these programs are merely further evidence of TBN's control over NMTV. Joy is a program that was allegedly "given" to NMTV by TBN, but TBN retained control through the program agreement. MMB Ex. 393. Northwest Praise the Lord was a local version of TBN's Praise the Lord program and was subject to TBN guidelines. Tr. 4423-4424. Northwest Focus was a public affairs program which appears to be similar to programs on TBN stations. Tr. 4405-4406, TBF Exs. 32-33 (see Feedback). All local programming was preempted during TBN's Praise-A-Thon, its primary fund raiser. Tr. 4412-4414. NMTV's community involvement programs, Prayer Partner Line and His Hand Extended,

were the same programs carried out at TBN stations. Tr. 4418, 4420, 4464-4465. The TBN phone number was used when local prayer partners were not available. Faced with this overwhelming evidence of control, Trinity argues that program affiliation does not constitute de facto control. Trinity at 28-29. Not every network affiliate is under the de facto control of the network, but the NMTV "affiliates" were dominated in ways never heard of at ABC, NBC, CBS or Fox. NMTV's board never had any meaningful input into its programming. The board merely stated vague wishes which were not implemented.⁸

4. Board of Directors. While TBN ran NMTV, NMTV's outside directors were fundamentally ignorant of its affairs. NMTV complains that the Presiding Judge placed excessive reliance on "a litany of mainly operational details" that the outside directors did not know and that they did know and contribute a lot. NMTV at 11. This argument is simply incredible. The "operational details" were the most basic facts about the company's operation that any director would need to know in order to oversee a company. A review of the findings in ¶¶108-130 of the I.D. demonstrates their utter lack of knowledge and lack of meaningful participation.

5. Other Indicia of Control. TBN represented to the public that NMTV was TBN's "Satellite Division" (I.D., ¶321), which was consistent with TBN's practice of arbitrarily designating TBN translator expenses to NMTV.

⁸ Trinity's speculation that the Presiding Judge was attacking their religious beliefs (Trinity at 29 n.53) has no merit. Its citation of isolated comments wholly fail to give any support to its wild claims. The argument that NMTV had a constitutional right to affiliate with TBN is a non sequitur. The basis for disqualification is the de facto control and abuse of process, not the religious affiliation or fact of affiliation. Trinity's argument (at 31-32) that the Religious Freedom Restoration Act or the Constitution gives it the right to ignore the Commission's ownership limitations is frivolous. Faith Center, Inc., 82 FCC 2d 1, 18-20 (1980), Kings Garden, Inc. v. FCC, 498 F.2d 51 (D.C. Cir. 1974), cert. denied 419 U.S. 996 (1975).

Trinity's argument that Crouch meant that NMTV was an affiliate (Trinity at 30 n.57) is contrary to the plain meaning of the words.

Moreover, Hill's references to NMTV as TBN's child show how the principals did not consider NMTV to be an independent corporation. Tr. 1926. He supposedly wanted NMTV to become independent, but he was unaware of any plans for NMTV to "break away." Tr. 2025-2027. When NMTV director Espinoza resigned, he referred to resigning from the TBN board. TBN Ex. 105, Tab A.⁹

6. Precedent. In the HDO, the FCC considered and denied the essence of the legal arguments of Trinity and NMTV, centered on the notion that a non-stock corporation purportedly serving minorities need not be concerned with de facto control, and designated the hearing based upon a prima facie case that Trinity had such control of NMTV. The pervasive dominance of Trinity over NMTV has been documented in this record far beyond any legitimate argument to the contrary. None of the cases and other precedent cited by Trinity and NMTV remotely involves such a record, or defends the notion that - the 60-year legislative and regulatory program requiring an examination of de facto control of a broadcast licensee - does not apply to minorities. (a) Random Selection Lotteries, 53 RR 2d 1401 (1983). Trinity at 2, does not look solely to ownership by minorities irrespective of control; it implements a statute which allows preferences for an "applicant controlled by" minorities, 47

⁹ Trinity (at 10) and NMTV (at 8) rely upon the fact that while the TBN articles give special protection to Crouch, the NMTV articles do not. In fact, the difference was mere happenstance that occurred without any discussion (Tr. 2484-2488), and the idea that NMTV's directors could even attempt to remove Crouch and break free from TBN is unthinkable. Moreover, Trinity's argument concerning Duff's position (n.17) ignores Crouch's prior problems with maintaining control at TBN. NMTV's argument that there the discrepancy between the ten directors provided for in the articles and the three or four directors who actually served (NMTV at 20-21) ignores what the Presiding Judge said. It is not the discrepancy per se but Crouch's practice of hand picking a small number of people with demonstrated loyalty to TBN which establishes TBN's control. I.D., ¶308.

U.S.C. §309(i)(3)(A), and requires a certification that the applicant is the "real party in interest," 53 RR 2d at 1418. (b) The dissenting opinion of Commissioner Patrick expressing concern whether 51% minority owners will be assured control over television stations acquired under the then 12-14 station national limit does not, by itself, or in conjunction with the rule language¹⁰ and the majority opinion adopted in 1985, *Trinity* at 3, abrogate the concept, dating back to the very beginnings of the FCC itself, Heitmeyer, *supra*, decided in 1937, that de facto control may not be exercised without prior FCC approval under 47 U.S.C. §310. (c) The antecedent (1982) FCC policy statement to promote minority ownership, *Trinity* at 4, 26, *NMTV* at 16, 52 RR 2d 1301 (1982), made clear that minority General Partners in a Limited Partnership must have "complete control over a station's affairs," citing Southwest Texas Broadcasting Council, 49 RR 2d 156 (1981), *Trinity* at 28, 31, for the three part de facto test of control over programming, personnel and finances, 49 RR 2d at 1306. (d) The subsequent (1995) FCC rulemaking notice regarding initiatives to promote minority ownership, 10 FCC Rcd 2788 (1995), *Trinity* at 7, cited the 12-14 station rule adopted in 1985, gave no indication that the rule was an unexpressed exception to the 60 year consistent history prohibiting de facto control under the statute, and solicited ideas for relaxing the de jure ownership requirements for minorities with accompanying ideas for ways and means that actual control would be retained. 10 FCC Rcd at 2789, 2794-95. (e) A notice of inquiry issued in 1989 regarding transfers of control of non-stock entities, 4 FCC Rcd 3402, *Trinity* at 8, 32, *NMTV* at 17,

¹⁰ *Trinity* at 3 cites the rule text stating "minority-controlled" means "more than 50% owned by" minorities while omitting the necessary related citation to Note 1 stating that the word "control" used in the rule "is not limited to majority stock ownership, but includes actual working control in whatever manner exercised."

while propounding various proposals regarding de jure control of such entities, as to which some uncertainty was recognized, made it crystal clear that the matter of de facto control is applicable to such entities as well as to stock companies, and was not a question for discussion in response to the notice of inquiry, 4 FCC Rcd at 3404. (f) Not cited by either Trinity or NMTV is a noted case, Trustees of The University of Pennsylvania, 69 FCC 2d 1394 (1978), applying the de facto control standard to a non-stock corporation.

Other cases cited by these parties do not support their cause. (a) Fox Television Stations, 10 FCC Rcd 8452 (1995), Trinity passim, NMTV at 10, 18, held that Mr. Murdoch, a United States citizen, had de jure and de facto control of both (i) a foreign entity which held 99% of the capital of (ii) a domestic company seeking to acquire television licenses, accepting his good faith reliance on advice by counsel that alien restrictions were satisfied under those circumstances¹¹, and was given time to reduce the capital of the foreign entity to 25%. (b) BBC License Subsidiary L.P., 10 FCC Rcd 7926 (1995), Trinity passim, upheld control of a three-person board by two former Columbia Pictures executives who headed an \$850 million company acquiring a TV station in Wisconsin vis-a-vis Mr. Murdoch's Fox entity holding a nonvoting stock position with only one member on the board.¹² (c) Payne Communications, Inc., 1 FCC Rcd 1052 (Rev. Bd. 1986) and Coastal Broadcasting Partners, 6 FCC Rcd 4242 (Rev. Bd. 1991), Trinity at 10, were comparative cases denying "integration" credit to General Partners who could be removed by the Limited

¹¹ A legal interpretation, which bears no relation to the massive dominance of a licensee by another entity, here, for which there could be no innocent misunderstanding of the law either by the licensee itself or by its communications counsel.

¹² These parties had parity and bear no resemblance to NMTV, which had no financial or other base to resist TBN's domination.

Partners who funded, and were in a position to control, the venture.¹³ (d) WCVQ, Inc., 7 FCC Rcd 4849 (Rev.Bd. 1992) and another aspect of the Coastal case, 7 FCC Rcd 1432 (1992), Trinity at 10, were comparative cases granting 100% "integration" credit to a sole stockholder and a director of a corporation who could elect and remove additional directors as he or she wished. (e) In Seven Hills Television Co., 2 FCC Rcd 6867 (Rev. Bd. 1987), Trinity at 28-31, an alien party was required to divest itself of control of broadcast stations, but did not forfeit the licenses, based upon a 25-year record in which the alien party (whose international holdings were vastly larger and more important than the United States interests in question) never exercised any control over the operations of those stations even though it had the power to do so.¹⁴ (f) Shuttlesworth v. City of Birmingham, 394 U.S. 147 (1969), Wooley v. Maynard, 430 U.S. 705 (1977), Shelton v. Tucker, 364 U.S. 479 (1960) and Branti v. Finkel, 445 U.S. 507 (1980), Trinity at 29-32, dealt with freedom of speech issues involving public demonstrations, state license tags, government employees' personal and political associations.¹⁵ (g) Ellis Thompson Corp., 10 FCC Rcd 12554 (ALJ 1995), NMTV at 10-11, upheld retention of control based on detailed examination of factual affidavits under a six

¹³ These and other cases scrutinizing the control under two-tiered "integration" structures, which often consisted of minority General Partners and Caucasian, monied Limited Partners, are further demonstration that the agency's concern over de facto control of broadcast licensees applies to minorities as well as to all other parties without exception.

¹⁴ The converse is the case here. For a period of many years, Trinity has engaged in a thoroughly-established course of conduct directing all phases of the activities of the NMTV and the operation of its stations.

¹⁵ There is no freedom of speech or other constitutional issue here. To the contrary, Trinity and NMTV are seeking special dispensation for a massive and deliberate law violation over a period of many years because minorities and religious entities are involved, an untenable position which no doubt would be an anathema to the Courts that decided these cases.

part test of de facto control of common carrier facilities in which the licensee of record was totally responsible for the costs of construction and operation of a cellular telephone system and demonstrated specific and continuing substantive activity relative to all six factors.

Two cases in which the FCC held there was a fatal de facto control situation bear against the opposing parties here. In Stereo Broadcasters, Inc., 87 FCC 2d 87 (1981), Trinity at 23-24, the FCC denied renewal of license in a Trinity-NMTV modus operandi where an unapproved outside party had control of the money and all details of station operation. In Phoenix Broadcasting Co., 44 FCC 2d 838 (1973), Trinity at 23, the FCC declined to allow a prospective assignee to advance money and be active in station management as an interim measure pending consideration of a pending assignment application.

None of the other cases involve a pervasive mosaic of dominance such as that established here, e.g., Tri-Counties Communications, Inc., 31 FCC 2d 83 (1971), Trinity at 23 (minor interim actions by prospective assignee); David A. Davila, 5 FCC Rcd 5222 (1990), 6 FCC Rcd 2897 (1991), Trinity at 23-24, 29 (executory letters of intent and stock pledges); Fort Collins Telecasters, 60 RR 2d 1401 (Rev. Bd. 1986), Trinity at 27 (bookkeeper-account payable clerk who did not furnish the funds disbursed); Pentecostal Revival Association, Inc., 1 FCC Rcd 842 (1986), Trinity at 27 (voting principals had power to expend funds for construction and operation so long as reasonable and prudent); High Sierra Broadcasting, Inc., 96 FCC 2d 423 (Rev. Bd. 1983) and Hispanic Keys Broadcasting Corporation, 3 FCC Rcd 3584 (Rev. Bd. 1988), Trinity at 27-28 (involving the special "control" situation in dealing with

family members and, on the facts, concluded that family members in the application were the real parties in interest).¹⁶

La Star Cellular Telephone Company, 7 FCC Rcd 3762 (1992), Trinity at 28, contains a footnote statement that control of finances is not as important for noncommercial broadcasters who rely on grants as for commercial broadcasters, citing Southwest Texas, *supra*, which involved grants traditional for public TV stations, not the monolithic domination by one non-stock entity of another such entity having no financial base of its own. Turner Broadcasting System, Inc., 101 FCC 2d 843 (1985), upheld changes in board and stockholder rights by CBS to guard against a hostile takeover based on all the circumstances, and not as an ironclad acceptance of the de jure corporate provisions, as cited by Trinity at 25. Seven Locks Broadcasting Co., 94 FCC 2d 899 (1983) and Pacifica Foundation, 41 FCC 2d 71 (1989), NMTV at 17, involved changes in directors of non-stock entities, i.e., a church in suburban Maryland and a multiple station owner foundation, without any evidence of de facto control resting in another party who dominated the church or foundation and who manipulated the changes in directors in order to present to the FCC the apparent picture of a lawful de jure posture, while masking its underlying, undeniable total de facto control and domination of the licensee.

Which is precisely what Trinity has done here.

B. Intent to Deceive

The record demonstrates that TBN, NMTV and Crouch intentionally abused the FCC's processes and intentionally withheld information from the FCC

¹⁶ Staff letter rulings relative to developing policy to deal with radio station LMAs during the period 1990-1992 culminating in the FCC rule change in 1992 to equate LMAs with station ownership-control for duopoly purposes are sui generis and inapposite. J. Dominic Monahan, 6 FCC Rcd 1867, Brian M. Madden, 6 FCC Rcd 1871, Peter D. O'Connell, 6 FCC Rcd 1869, Roy R. Russo, 5 FCC Rcd 7586 and Michael R. Birsell, 7 FCC Rcd 7891. Trinity at 23-24.

concerning the nature of the relationship between TBN and NMTV. The record mandates a conclusion that the Presiding Judge was correct.

1. Candorless Pleadings and Applications. TBN and NMTV did not fully disclose their relationship until forced to do so by the Bureau's inquiry asking focused and detailed questions. The Odessa assignment application (MMB Ex. 129), the Portland assignment application (TBF Ex. 101, Tab T) and the various LPTV applications filed by NMTV never presented the FCC with an accurate and complete disclosure of the relationship between the two companies. Thus, until the FCC issued its letter of inquiry, it was never told that: TBN employee Ben Miller supervised the construction of NMTV stations, TBN employees provided site acquisition services and purchased equipment for NMTV, TBN donated equipment and supplies to NMTV, TBN provided payroll, accounting and bookkeeping services to NMTV, TBN provided business services to NMTV, NMTV used the services of TBN-related or owned companies Planck Technical Services, Inc. and Media Services Agency, Juggert had acted as NMTV's attorney, the same accountants prepared the two companies' tax returns, and that NMTV had appointed TBN as its accounting agent. Tr. 2393-2395. Similarly, it was not disclosed that: NMTV had no checking account prior to 1987, no NMTV officer except for TBN employees had signed an NMTV check, and TBN provided NMTV with an open line of credit. Tr. 1545-1548.

Furthermore, when NMTV's bona fides were first challenged in the Wilmington proceeding, NMTV responded with a series of false and misleading assertions. It said that NMTV had "acquired, constructed, and operated two full power television stations since early 1987" without disclosing TBN's dominant role in financing and constructing the stations. MMB Ex. 353, Pp. 4-5. NMTV described itself as having "a history of over ten (10) years duration" without disclosing its dormant status prior to 1987 or that TBN had

described NMTV as a division of TBN. Id. at 10. It said NMTV "had its own bank accounts" without disclosing that such was not the case until 1987 or that TBN employees had signed all the checks on those accounts. Id. It asserted it had its own revenues without disclosing those revenues were based upon carriage of TBN programming based upon zip code revenue sharing. See Joint Ex. 1, Pp. 21-23. It asserted that it had its own policies without disclosing their virtual identity to TBN's policies. MMB Ex. 353, P. 11. It described Espinoza and Aguilar as "principals with a depth of personal, broadcast and managerial experience who would give credit to any nonprofit corporation on whose board they sat" (Id. at 22) without disclosing their lack of knowledge about or participation in NMTV's affairs. It wrote, "It hires and fires its own employees... It files its own tax returns. It pays its own bills." Id. at 17. It did not say that TBN employees managed its affairs, that Ben Miller had a key role in hiring several employees, that TBN prepared NMTV's tax returns, and that TBN paid its bills. Finally, it claimed that a bank loan was "the cornerstone of NMTV's funding to acquire WGTI-TV..." when, in fact, it was relying on TBN for funding. Duff admitted the bank letter was for appearances only. Tr. 2119.

NMTV's lack of candor continued in its November 18, 1991 "Request for Declaratory Ruling." It claimed that Aguilar attended "most" board meetings, read minutes of meetings, spoke with Duff periodically about NMTV business, and received and reviewed financial statements. Glendale Ex. 216, P. 7. In fact, Aguilar had only attended three of six meetings (not "most"), and Duff could only remember one conversation with Aguilar during his directorship. Tr. 1494. She talked to his secretary five or six times. Tr. 2256-2257. As for financial statements, he only remembers seeing one statement, did not know how often they were prepared, and never reviewed them carefully because that